

In the Matter of License No. A-12137
Issued to: MAX A. RANCOD

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

382

MAX A. RANCORD

This case comes before me by virtue of 46 United States Code 239(g) and 46 Code of Federal Regulations 137.11-1

On 6 April, 1949, Appellant appeared before an Examiner of the United States Coast Guard at New York City to answer a charge of "negligence" based upon specifications reading as follow:

1. In that you, while serving as Master on board a merchant vessel of the United States, the SS PIONEER GLEN, under authority of your duly issued License, did, on or about 18 October, 1947, while said vessel was proceeding at full speed in dense fog in the vicinity of Fire Island buoy, and while said vessel was approaching another vessel, the USAT GENERAL RICHARDSON, fail to reduce speed, thereby contributing to a collision between two vessels.
- "2. In that you, while serving as above on or about 18 October, 1947, while said vessel was proceeding at full speed through dense fog and hearing, apparently forward of your beam, the fog signal of the USAT GENERAL RICHARDSON, the position of which could not be ascertained, fail to stop your engine and navigate with caution, thereby contributing to a collision between the two vessels."

To the charge and each specification, Appellant pleaded "not guilty"; and after an opening statement by the Investigating Officer, counsel for the Appellant moved that the proceedings be dismissed for several assigned reasons; all of which were overruled by the Examiner.

The record reflects extended colloquy between counsel for Appellant, the Investigating Officer and the Examiner on the motions, as well as on the admissibility of photostat copies of log records from the ship which were offered in evidence by the Investigating Officer. It is unnecessary to discuss here the variety of questions and technical points raised by Appellant's counsel during the proceedings preliminary to the reception of testimony, beyond observing that, in general, the attitude of the Examiner appears to have been eminently proper, fair, tolerant and patient.

Appearing as the only witness called by the Investigating Officer was the First Mate of the SS PIONEER GLEN who was extensively examined and cross examined, and at the conclusion of

his testimony, the Investigating Officer rested his case.

Counsel for Appellant then renewed motions to dismiss: (1) because of laches; (2) because the specifications do not state facts sufficient to constitute a cause of action; and (3) because the proof presented is not sufficient to prove the case against the person charged.

These motions being overruled, no testimony was offered by or on behalf of the person charged.

After argument, the Examiner found the charge and each specification proved, and entered an order dated 12 August, 1949, suspending Appellant's License No. A-12137 for a period of three (3) months; the first month of said suspension being outright and terminating thirty days after Appellant deposits said license with the Coast Guard; the last two months of said suspension should not be made effective, provided no charge under R.S. 4450 be proved against Appellant for acts committed within eight months of the termination of the one-month's outright suspension.

From that order, this appeal is taken on the grounds that:

1. The order is clearly excessive.
2. The hearing should never have been held.
3. The specifications were defective.
4. All the Government exhibits were erroneously admitted.
5. The Master violated no law or regulation.
6. The decision constitutes the imposition of an ex post facto penalty.

Appearances: Messrs. Kirlin, Campbell, Hickox & Keating by John F. Gerity, Esq.,
and John Irwin Dugan, Esq., of York, for Appellant.

Based upon my examination of the record presented in this case, I hereby make the following

FINDINGS OF FACT

On 18 October, 1947, Appellant was acting under authority of his License No. A-12137, as Master of the SS PIONEER GLEN, which vessel was then proceeding at a speed of 15 knots enroute from Boston to New York, in the vicinity of Fire Island Buoy. Heavy, dense fog was encountered from midnight and continued during the several watches throughout the day until collision occurred at 1657 with the outbound United States Army Transport GENERAL RICHARDSON.

The SS PIONEER GLEN was equipped with Raytheon radar which had been operating from midnight on 18 October because of heavy fog prevailing throughout the morning watches. At 1330 on that date, the fog lifted and the PIONEER GLEN's engines were put on "full ahead," but at 1348, dense fog again set in, fog signals were sounded, and the engine telegraph was placed on "standby," although no reduction of engine speed was ordered on the PIONEER GLEN until 1657 - when collision occurred.

At 1605, the PIONEER GLEN was steering 270° True. At 1633, the course of PIONEER

GLEN was altered to 265° True to give greater clearance to an approaching vessel which should pass in the fog on the starboard hand. At 1636, when that vessel was abeam, course was again altered to 275° True to bring another approaching vessel 5° on PIONEER GLEN's port bow. At some time shortly thereafter, fog signals from the second vessel were heard and at 1647, the signals from the opposing vessel were heard close on the port bow and the course of PIONEER GLEN was further altered to 290° True; one minute later her course was altered to 300° and shortly thereafter hard right rudder was ordered, but at 1657, the starboard side of the USAT GENERAL RICHARDSON collided with the port side of PIONEER GLEN. Before coming out of the fog, the opposing vessel sounded two signals of two blasts each, which Appellant answered with an alarm signal. At about the instant of collision, an order was given to stop the engines of the PIONEER GLEN.

Beyond appearing on the radarscope of the PIONEER GLEN, the position of the second opposing vessel which was sounding fog signals was not ascertained visually until it emerged from the fog and collision was inevitable. From the return appearing on the radarscope of the PIONEER GLEN, it was known the opposing vessel was also equipped with radar and it was assumed that vessel would take avoiding measures similar to those employed by the PIONEER GLEN.

Careful watch was maintained by the PIONEER GLEN on the position and advance of the opposing vessel; and it was realized that the bearing did not change materially. Appellant had no information respecting the intention of the navigators on the opposing vessel (such as crossing the PIONEER GLEN's bow in close proximity, which would make the collision inevitable), but other than altering course, he took no preventive action to more certainly learn how the other vessel would pass. When the transport appeared to start across the PIONEER GLEN's bow the vessels were too close to avoid collision.

OPINION

Each point presented by this appeal has been carefully considered; and the opinion of the Examiner, in support of his order, has been reviewed.

Points 2, 3 and 4 are without merit in the light of Federal Communications Commission v. Pottsville Broadcasting Co., 309 U.S. 134, 142, 143, wherein the Supreme Court discusses the difference between ordinary judicial proceedings and administrative proceedings.

The contention that Appellant violated no law or regulation is clearly indifferent to the language of the very rule (Article 16, International Rules) which Appellant urges applies to the situation. See also Article 16 of the Inland Rules. Full speed in fog is not "moderate" speed as required by the Rule; and while Appellant could discern, by radar, the "position" of the RICHARDSON, he could not see the physical form of that vessel, nor could he determine what action would be taken there to avoid collision.

In view of the relatively minor damage which resulted from this collision, it seems quite evident that any timely reduction in the speed of the PIONEER GLEN would have afforded more

time which Appellant could use for actual avoidance of collision when the vessels came in sight of each other. The Chattahoochie, 173 U.S., 541, 548.

It is urged that Appellant should not be held to any responsibility for this collision because his vessel was equipped with radar, which supplied all the information he needed to fix the position of the opposing vessel; that it is unjust to expect a shipmaster independently to reach a conclusion respecting the proper interpretation of Article 16, "when the greatest minds in the field of navigation have but recently expressed any form of an official opinion."

Appellant's training and experience as a shipmaster presumably made him well-versed in the accepted interpretations of the Rules of the Road - both International and Inland. Nothing has come to my attention indicating that the advent of radar has made necessary a change in the long-standing Rules; and I perceive no good reason for permitting a vessel equipped with radar to ignore the rules requiring "moderate" speed in fog. Until the Rules are officially changed, the Coast Guard will follow the interpretations judicially announced, - and now well established.

CONCLUSIONS

The evidence supports the charge and specifications; there are, however, circumstances present in this case which warrant the following

ORDER

The Order of the Examiner dated 12 August, 1949, is MODIFIED to provide that Master's License No. A-12137 issued to Max A. Rancod be and the same is suspended for a period of three months. This suspension shall not be effective provided no offense under R.S. 4450 (46 U.S.C. 239) as amended, is proved against Appellant for acts committed within eight months following 12 August, 1949. As so modified, said Order is AFFIRMED.

MERLIN O'NEILL
Vice Admiral, U. S. Coast Guard
Commandant

Dated at Washington, D. C., this 4th day of January, 1950.